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E.O. 11652: N/A
TAGS: EFIN, LOS, ETRD, EINV, ENRG, OECD
SUBJECT: JANUARY 18-19 MEETING OF COMMITTEE ON FISCAL
AFFAIRS (CFA)

REF: (A) PARIS 036367, (B) CFA/A(77)2, (C) STATE
011565, (D) PARIS 035944, (E) PARIS 019984

1. SUMMARY. SUBSTANTIVE DEBATE OCCURED IN CFA ON:
(A) GATT PANEL REPORTS ON DISC AND COMPARABLE PRACTICES
OF BELGIUM, FRANCE AND NETHERLANDS; (B) TAXATION ISSUES
IN LAW OF THE SEA CONFERENCE; AND (C) DISCRIMINATION
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OF INTEGRATED INCOME TAXATION SYSTEM SUCH AS GERMANY
HAS. US WAS ASKED TO CHAIR AD HOC MEETING OF CFA ON
LOS TAX QUESTIONS IN PARIS ON MARCH 7. US REP BRIEFED
COMMITTEE ON MAJOR FACETS OF TAX REFORM WHICH PRESIDENT
WILL SHORTLY PRESENT TO CONGRESS AND ALSO NOTED RECENT
IRS RULING CONCERNING CREDITIBILITY OF PAYMENTS BY OIL
COMPANIES RELATED TO "POSTED PRICES" OF PRODUCING

COUNTRIES. CFA ALSO ROUTINELY APPROVED REPORTS OF ITS WORKING PARTIES (INCLUDING BRIEF DISCUSSION OF NATIONAL TREATMENT ASPECTS OF THE TAXATION OF MULTINATIONAL ENTERPRISES). CFA WILL MEET NEXT JUNE 21-22. END SUMMARY.

HOMAGE TO DR. WOODWORTH

2. AT OPENING OF MEETING, CFA DELEGATES HEARD A STATEMENT BY THE NEWLY ELECTED CHAIRMAN MOURNING THE DEATH OF DR. LAWRENCE WOODWORTH AND OBSERVED A MINUTE OF SILENCE IN HIS MEMORY.

ELECTIONS

3. CFA ELECTED NEW BUREAU CONSISTING OF DEKKER (NETHERLANDS) AS CHAIRMAN AND PHILIPP (AUSTRIA), RICHARDSON (IRELAND), AND SCHEEL (NORWAY) AS VICE-CHAIRMEN.

REPORTS OF WORKING PARTIES

4. DOUBLE TAXATION (WORKING PARTY 1). WP CHAIRMAN (BUBLOT, BELGIUM) REPORTED ON PROGRESS OF ONGOING WORK IN AREAS OF: (A) RECIPROCAL ADMINISTRATIVE ASSISTANCE; (B) REVISION OF CONVENTION ON ESTATES AND INHERITANCES; LIMITED OFFICIAL USE

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AND (C) ABUSE OF TAX CONVENTIONS. US, AS RAPPORTEUR FOR WORK ON ABUSE OF CONVENTIONS, WILL BE FURNISHING PAPER TO OTHER PARTICIPANTS. SUBORDINATE WORKING GROUP ON REVISION OF MODEL TREATY ON ESTATES AND INHERITANCES WILL MEET IN VIENNA BEGINNING FEB. 28. IT HOPES TO PREPARE AT LEAST FIRST 5 ARTICLES AND COMMENTARY FOR MAY WP-1 MEETING. AN AD HOC DISCUSSION OF UK-NORWAY AGREEMENT ON NORTH SEA OIL EXPLORATION WILL TAKE PLACE JUST BEFORE THAT MEETING.

5. SOCIAL AND STATISTICAL ASPECTS OF TAXATION (WORKING PARTY 2). CFA APPROVED REPORT OF ESTIMATING METHODOLOGY GROUP, CFA(77)10, AND ITS PUBLICATION AS ANNEX TO NEXT EDITION OF REVENUE STATISTICS. REPORT UPDATING ANALYSIS OF AVERAGE PRODUCTION WORKER'S POSITION, CFA(77)14, WAS APPROVED AND WILL BE FORWARDED TO COUNCIL FOR DERESTRICTION AND PUBLICATION. THOUGH FULL STUDY WILL BE REPEATED ON TWO-YEAR CYCLE, SECRETARIAT AGREED TO UPDATE KEY ELEMENTS OF THIS STUDY ON ANNUAL BASIS.

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OUTGOING WP-2 CHAIRMAN (CEDERBLAD, SWEDEN) NOTED THAT ESTIMATING METHODOLOGY GROUP, WHICH US CHAIRS, HAS BEEN MANDATED TO UNDERTAKE WORK ON ESTIMATING EXTENT OF TAX EVASION, IN COOPERATION WITH WP-8, AND THAT SEVERAL COUNTRIES (INCLUDING US) ARE WILLING TO SUBMIT NOTES.

6. TAXATION AND MULTINATIONAL ENTERPRISES (WORKING PARTY 6). APPROVAL OF REPORT ON TRANSFER PRICING AND SERVICES, CFA(77)15, WAS POSTPONED PENDING CONSULTATION WITH BIAC (SCHEDULED FOR MARCH 14) AND FORMAL APPROVAL BY THOSE WP-6 MEMBERS WHO ARE NOT REPRESENTED ON GROUP DRAFTING REPORT. UK PRESSED FOR EARLY PUBLICATION ONCE FOUR CHAPTERS COMPLETED. CFA THEN GRAPPLED WITH NATIONAL TREATMENT QUESTIONS POSED IN LAST DECEMBER'S MEETING OF COMMITTEE ON INTERNATIONAL INVESTMENT AND
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MULTINATIONAL ENTERPRISES (CIME), AS SET FORTH IN CFA(77)12 WITH SECRETARIAT'S COMMENTS. DELEGATES ENDORSED THE PRINCIPLE OF NATIONAL TREATMENT, WHICH IS ALSO INCORPORATED IN ARTICLE 24 OF MODEL CONVENTION (AND ELABORATED IN COMMENTS THERETO), BUT WERE INCLINED TO ACCEPT THE FRENCH POSITION THAT NATIONAL TREATMENT PROVISIONS OF THE 1976 OECD MINISTERIAL DECLARATION ON NATIONAL TREATMENT "SHOULD NEITHER ABROGATE NOR REPLACE" PROVISIONS OF MULTILATERAL OR BILATERAL TAXATION TREATIES. IT WAS AGREED THAT LITTLE NEW COULD BE ADDED BY CFA'S FORMALLY RESPONDING TO CIME AND THAT SECRETARIAT (HACKETT) SHOULD REPORT ORALLY TO APRIL MEETING OF CIME. (SEE PARA 9A BELOW REGARDING SUBSEQUENT RELATED DISCUSSION OF DISCRIMINATION INVOLVED IN INTEGRATED TAX SYSTEMS).

7. TAXATION AND ENERGY (WORKING PARTY 7). WP CHAIRMAN (MENCK, FRG) INDICATED THAT OTHER WP'S COULD PICK-UP ESSENTIAL ELEMENTS OF WP-7'S WORK AND THAT GROUP WOULD NOT MEET AGAIN UNLESS SPECIFIC NEED AROSE. CFA APPROVED WP-7'S FINAL REPORT, CFA(77)13, WHICH WILL BE CIRCULATED TO THE IEA AND OECD ENERGY POLICY COMMITTEE FOR INFORMATION.

8. TAX AVOIDANCE AND EVASION (WORKING PARTY 8). WP CHAIRMAN (WESTERBURGEN, NETHERLANDS) DESCRIBED WORK ON: (A) DEFINING TAX "AVOIDANCE"; (B) ESTABLISHING FREQUENCY AND COPING WITH OPERATIONAL DIFFICULTIES OF MEETINGS OF TAX INSPECTORS; (C) SPECIFIC ISSUES UNDER CONSIDERATION IN SUBORDINATE WORKING GROUPS ON ARTISTES AND ATHLETES, SHIPPING, AND EXCHANGE OF INFORMATION; AND (D) RELATIONS BETWEEN TAXPAYERS AND TAX ADMINISTRATIONS, WHICH WILL INCLUDE ESTIMATION OF EXTENT OF LIMITED OFFICIAL USE

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EVASION (SEE PARA 5 ABOVE).

ISSUES IN RECENT TAX DEVELOPMENTS

9. CONSIDERABLE TIME DEVOTED TO SELECTED ISSUES IDENTIFIED IN PART I OF CFA(77)9:

A. NEW FRG CORPORATE TAX SYSTEM. DESCRIPTION BY FRG DEL (MENCK) OF FRG VIEW OF IMPLICATIONS OF NEW SYSTEM AND PROGRESS IN DOUBLE TAXATION LEGISLATION TO TAKE ACCOUNT OF SYSTEM GAVE RISE TO EXTENSIVE EXCHANGE, AT TIMES HEATED, ON SYSTEM'S DISCRIMINATION AGAINST NON-RESIDENT SHAREHOLDERS. MENCK INSISTED THAT FOREIGN SHAREHOLDERS ENJOY BENEFITS THROUGH SPLIT GERMAN RATE (56 PERCENT ON UNDISTRIBUTED, 36 PERCENT ON

DISTRIBUTED PROFITS), AND THAT IMPUTATION SYSTEM WITH RESPECT TO DISTRIBUTED PROFITS COULD JUSTIFIABLY BE LIMITED TO GERMAN SHAREHOLDERS SINCE ONLY THEY ARE LIABLE TO GERMAN INDIVIDUAL INCOME TAX. EC REP DESCRIBED DRAFT DIRECTIVE BY COMMISSION WHICH WOULD REQUIRE MEMBER STATES TO TREAT ALL EC RESIDENTS IN THE SAME MANNER AS DOMESTIC SHAREHOLDERS AND TO AVOID GRANTING TO THIRD COUNTRIES WITH WHOM THEY NEGOTIATE BILATERAL AGREEMENTS TREATMENT MORE FAVORABLE THAN THAT ACCORDED OTHER EC MEMBERS. SECRETARIAT (HACKETT) PROPOSED THAT CFA, THROUGH ITS BUREAU, CONSIDER WHETHER GENERAL ISSUES ARE INVOLVED IN THESE AREAS; UK AND FRG RESISTED HAVING SUCH A MULTILATERAL DISCUSSION.

B. RATIFICATION OF US-UK TREATY. US REP (ROSENBLOOM)

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DESCRIBED STATUS OF RATIFICATION PROCESS IN SENATE FOREIGN RELATIONS COMMITTEE. IN RESPONSE TO QUESTION BY FRENCH DEL ON ANOTHER MATTER, ROSENBLOOM SAID THAT THE ADMINISTRATION IS NOT PUSHING FOR IMMEDIATE ACTION ON LEGISLATION WHICH WOULD ALTER SECTION 896 OF IR

CODE TO AUTHORIZE PRESIDENT TO RETALIATE AGAINST COUNTRIES DISCRIMINATING AGAINST US FIRMS, BECAUSE OF DESIRABILITY OF VERY CAREFUL CONSIDERATION AND FULL AIRING OF VIEWS. HOWEVER, ADMINISTRATION IS COMMITTED TO THE PROPOSAL.

C. SPANISH TAX REFORM. GOS REP SUMMARIZED TAX REFORM STEPS TO DATE WHICH ARE SET FORTH IN TEXT (FRENCH ONLY) CIRCULATED AT MEETING. COPIES BEING MAILED TO DEPARTMENT/RPE(GELBARD) AND EMBASSY MADRID.

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D. US TAX MEASURES. AFTER REVIEWING RECENT INCREASES IN SOCIAL SECURITY TAX BASE AND RATE AND STATUS OF TAX-RELATED MEASURES IN THE ENERGY BILL, ROSENBLUM PROVIDED CONFIDENTIAL ADVANCE BRIEFING OF FOLLOWING MAJOR ELEMENTS OF INTERNATIONAL INTEREST IN CARTER ADMINISTRATION'S TAX PROPOSALS TO BE ANNOUNCED SHORTLY BY THE PRESIDENT: REDUCTION IN INDIVIDUAL AND CORPORATE RATES; LIBERALIZATION OF INVESTMENT TAX CREDIT; SIMPLIFIED AND LIBERALIZED RULES ON BUSINESS CONVENTIONS ABROAD; PHASE OUT OF DISC PROVISIONS; PHASE OUT OF DEFERRAL OF TAXATION OF FOREIGN SUBSIDIARIES' EARNINGS.

E. INDEXATION. UK REP (SMALLWOOD) EMPHASIZED THAT INDEXATION PROVIDED IN BRITISH LEGISLATION WAS NEITHER GENERAL NOR AUTOMATIC, AS OPPORTUNITY EXISTS FOR MINISTERIAL AND PARLIMENTARY OVERRIDING OF PROVISIONS, AND THAT PARTIAL INDEXATION DISCRIMINATES AGAINST SOME TAXPAYERS. SHE SAID HMG OFFICIALS ARE "SEMI-AGNOSTIC" REGARDING INFLATIONARY IMPACT OF TAX INDEXATION.

F. ZENITH AND US STEEL CASES. US (HORST) BRIEFED CFA ON STATUS OF COURT CASES AND THEIR INTERRELATIONSHIP. IN RESPONSE TO EC QUERY REGARDING PRESS REPORTS THAT US STEEL IS WITHDRAWING ITS COMPLAINT IN WAKE OF AGREEMENT ON TRIGGER PRICE SYSTEM, HORST SAID HE HAD NO INFO THAT COMPANY HAD FORMALLY WITHDRAWN IT.

G. GATT PANEL REPORTS ON DISC AND RELATED PRACTICES OF BELGIUM, FRANCE AND NETHERLANDS. NETHERLANDS DEL (GRIFFIOEN) READ STATEMENT REVIEWING DUTCH REJECTION OF FINDINGS OF GATT PANEL AND PROCEDURAL PROPOSAL
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FOR RESOLUTION OF PROBLEM WHICH IS NOW UNDER CONSIDER-
ATION. ELEMENTS OF NOVEMBER 11, 1977 US MEMO TO
GATT COUNCIL WERE EXTENSIVELY CRITICIZED, INTER ALIA
AS AN ATTACK ON EXEMPTION SYSTEMS GENERALLY. IN
RESPONSE USDEL REFRAINED FROM POINT-BY-POINT RESPONSE,
BUT NOTED THAT SOME POINTS IN MEMO HAD BEEN MISUNDER-
STOOD. HE DESCRIBED HISTORY OF TAX QUESTIONS LEADING
UP TO DISC LEGISLATION AND, WHILE EMPHASIZING ADMINIS-
TRATION'S INTENTION TO WORK TOWARD ITS BEING PHASED
OUT, REMINDED INTERLOCUTORS THAT AN EFFECTIVE OPPOSITION
LOBBY EXISTS AND THAT CONGRESS WILL BE LOOKING CLOSELY
AT TREATMENT OF EXPORTERS IN OTHER COUNTRIES. USDEL
UNDERLINED DESIRE TO WORK TOWARD SOLUTION OF PROBLEM
CREATED BY OTHER COUNTRIES' PRACTICES. THE OTHER
COUNTRIES CONCERNED ECHOED THIS DESIRE WHILE REITERATING
THEIR POSITION ON THE ADMISSABILITY OF THEIR PRACTICES.
CFA DID NOT ACCEPT PROPOSAL (OPPOSED BY US) TO STUDY
THE QUESTIONS IN CFA FRAMEWORK, BUT WILL RECONSIDER A
POSSIBLE CFA ROLE AFTER RESOLUTION OF THE GATT-RELATED
QUESTIONS.

H. LUXEMBOURG TAX MEASURES. GOL REP GAVE ORAL BRIEF-
ING ON VARIOUS STEPS IN PROCESS WHICH WILL BE AMPLIFIED
IN NOTE TO BE PROVIDED .

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I. IRS RULING CONCERNING "POSTED PRICES". US NOTED JANUARY 16 RULING (REF C), UNDER WHICH CERTAIN PAYMENTS BY US OIL COMPANIES TO CERTAIN FOREIGN GOVERNMENTS WILL NO LONGER BE CREDITABLE, AND AGREED TO SUBMIT A NOTE ON THE RULING TO CFA WITHIN A MONTH.

TAX ISSUES IN UN CONFERENCE ON LAW OF THE SEA (LOS)

10. USDEL OUTLINED MAIN ELEMENTS OF ADMINISTRATION'S THINKING ON TAX ISSUES IN LOS CONFERENCE, EMPHASIZING IMPORTANCE USG ATTACHES TO PRINCIPLE OF "DOMESTIC TREATMENT" AND URGING OTHER COUNTRIES TO ADOPT THIS PRINCIPLE IN ORDER TO IMPEDE TAX AVOIDANCE VIA FIRMS ESTABLISHED FOR DEEP SEA BED MINING AND TO PRECLUDE CREATION OF COMPETITIVE ADVANTAGES FOR CERTAIN FIRMS.
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COPIES OF HR 3350 WITH ADMINISTRATION'S PROPOSED AMENDMENTS WERE PROVIDED ON UNOFFICIAL, CONFIDENTIAL BASIS. A NUMBER OF COUNTRIES SUPPORTED US VIEWS, AND, ALTHOUGH SOME FELT THAT FURTHER CONSIDERATION MIGHT BE PREMATURE, IT WAS AGREED THAT AD HOC MEETING PRIOR TO RECONVENING OF LOS CONFERENCE WOULD BE USEFUL. ACCORDINGLY, CFA DECIDED TO HOLD MEETING MARCH 7 OPEN TO ALL COUNTRIES (8-10 EXPECTED TO ATTEND). US ACCEPTED INVITATION TO TAKE THE CHAIR. PAPERS PREPARED FOR THIS CFA SESSION WOULD BE BASIS OF DISCUSSION AT MARCH MEETING.

US INTERNATIONAL BOYCOTT BILL

11. US REP CHARACTERIZED US BACKGROUND NOTE (CFA(77) 16) AS ACCURATE BUT SOMEWHAT CURSORY DESCRIPTION OF ITS LAWS. HE SAID FORTHCOMING REGULATIONS WILL FURTHER LIMIT THEIR EXTRA-TERRITORIAL APPLICATION.

REPORT ON ACTIVITIES OF THE COMMITTEE

12. SUBJECT TO A FEW AMENDMENTS COMMITTEE APPROVED CFA(77)8, WHICH DESCRIBES PREVIOUS ACTIVITIES AND CURRENT WORK PROGRAM OF CFA. COUNTRIES MAY SUBMIT FURTHER CHANGES ON POINTS OF DETAIL DURING NEXT

MONTH; IT WILL THEN BE SUBMITTED TO OECD COUNCIL
FOR DERESTRICTION.

OTHER BUSINESS

13. NEXT MEETING OF CFA SET FOR JUNE 21-22.
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